

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA

Bernard Brown, ) C/A No. 6:09-2632-JFA-WMC  
 )  
 Plaintiff, )  
 )  
 vs. ) ORDER  
 )  
 Major Phillip Anderson; Sgt. Holzclaw, )  
 )  
 Defendants. )  
 )

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The *pro se* plaintiff, Bernard Brown, brings this action pursuant to 42 U.S.C. § 1983. He is being detained at the Greenwood County Detention Center. The plaintiff alleges that the defendants failed to provide for his safety when he fell and was injured while trying to climb into the top of bunk bed in his cell.

The Magistrate Judge assigned to this action<sup>1</sup> has prepared a Report and Recommendation wherein he suggests that this action should be dismissed for failure to state a claim upon which relief can be granted. Specifically, the Magistrate Judge correctly suggests that this case essentially alleges a violation of a duty of care arising under state law, such as negligence, and as such, does not impose liability under § 1983. Nor can the

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<sup>1</sup> The Magistrate Judge's review is made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of those portions of the Report to which specific objection is made and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

complaint claim deliberate indifference to the plaintiff's safety because the plaintiff makes no allegations that the named defendants were deliberately indifferent or that they had knowledge of a specific risk or harm to the plaintiff.

The Report sets forth in detail the relevant facts and standards of law on this matter, and the court incorporates such without a recitation.

The plaintiff was advised of his right to file objections to the Report and Recommendation, which was entered on the docket on November 16, 2009. However, the plaintiff did not file any objections to the Report within the time limits prescribed.

After a careful review of the record, the applicable law, and the Report and Recommendation, the court finds the Magistrate Judge's recommendation proper and incorporated herein by reference. Accordingly, this action is dismissed without prejudice and without issuance and service of process.

IT IS SO ORDERED.



Joseph F. Anderson, Jr.  
United States District Judge

January 13, 2010  
Columbia, South Carolina